

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

JACKIE LAMAR JOHNSON, #159385,)
Petitioner,)
v.) CIVIL ACTION NO. 3:06cv071-WHA
KENNETH JONES, et al.,)
Respondents.)

ORDER

This lawsuit is now before the court on a Notice of Appeal (Doc. #16), which the court construes as containing a motion for issuance of certificate of appealability and a motion to be allowed to proceed on appeal *in forma pauperis*.

To obtain a certificate of appealability the prisoner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).¹ For the reasons given in the recommendation of the United States Magistrate Judge, the court finds that the petitioner has failed to make a "substantial showing of the denial of a constitutional right."

Accordingly, it is ORDERED as follows:

¹The standard for a certificate of appealability is that the petitioner must "make a 'substantial showing of the denial of [a] federal right.'" Barefoot v. Estelle, 463 U.S. 880, 893, 103 S.Ct. 3383, 3394 (1983) (quoting Stewart v. Beto, 454 F.2d 268, 270 n.2 (5th Cir. 1971), cert. denied, 406 U.S. 925, 92 S.Ct. 1796 (1972)). The Supreme Court further explained that "'in requiring a "question of some substance," or a "substantial showing of the denial of [a] federal right," obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are "adequate to deserve encouragement to proceed further.'" Id. at 893 n.4, 103 S.Ct. at 3394 n.4 (quoting Gordon v. Willis, 516 F. Supp. 911, 913 (N.D.Ga. 1980).

1. Petitioner's motion for a certificate of appealability is DENIED.
2. Petitioner's motion to be allowed to proceed on appeal *in forma pauperis* is DENIED.

DONE, this the 14th day of August, 2006.

/s/ W. Harold Albritton

W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE